D.B. Civil Special Appeal (Writ) No.1033/2007

Umaro Singh Buliya. vs. State of Rajasthan & Ors.

Date : 8.12.2007

HON'BLE MR. PRAKASH TATIA, J.

HON'BLE MR. BHANWAROO KHAN, J.

Mr.S Sharma, for the petitioner/appellant.

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Heard.

The appellant/petitioner has challenged the order of the learned Single Judge dated 5.9.2007 by which the writ petition of the appellant was dismissed. After considering the grounds raised by the appellant, the learned Single Judge was of the view that it is not appropriate to restore an order otherwise illegal on the count that the authority passing the order was not having jurisdiction.

The appellant failed to show any lawful authority under which he is occupying the premises in question. It is clear from the impugned order itself that the lease could not have been granted for the premises for which Annex.1 was executed. Admittedly, the said lease was not approved and was cancelled as back as on 2.8.1975 by the Director, Local Bodies. That order has

not been challenged anywhere.

Learned counsel for the appellant tried to refer the document annexed in the writ petition at page no.56 whereby certain amount was claculated and was demanded from the appellant and according to the appellant, he paid the same.

Mere demand of some amount under an illegal lease or license cannot create the lease or license valid in any manner. Admittedly, the premises is a public premises and the petitioner failed to establish any contract on the basis of which the petitioner can remain in possession. Long possession cannot entitle the petitioner to have any right over the disputed premises. Equitable jurisdiction is not available unless a legal right is shown by the party to establish his right.

In view of the above, this special appeal, having no merit, is hereby dismissed.

(BHANWAROO KHAN), J. (PRAKASH TATIA), J.

S.Phophaliya